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November 30, 2018

Freeman, et al. v. HSBC Holdings plc, et al.,
14-cv-06601-DLI-CLP

Dear Judge Pollak:

We represent Credit Suisse AG in the above-captioned matter. We respectfully write on behalf of the Moving Defendants¹ in accordance with the Court's minute entry dated November 7, 2018, to notify the Court that a motion by Plaintiffs to amend their complaint is required. The Moving Defendants do not consent to the filing of the proposed Third Amended Complaint or to Plaintiffs' request to add "similar allegations for additional plaintiffs before year's end". (Dkt. No. 199 Ex. A at 3.)

Plaintiffs filed this action on November 10, 2014. (Dkt. No. 1.) On August 17, 2016, Plaintiffs filed the corrected second amended complaint (the "Second Amended Complaint"). (Dkt. No. 115.) Motions to dismiss the Second Amended Complaint were fully briefed on November 11, 2016. (See Dkt. Nos. 116-130.) On July 27, 2018, this Court issued a Report and Recommendation (Dkt. No. 165), to which Defendants filed timely objections (Dkt. Nos. 173-74). Defendants' objections are currently under review by Chief Judge Irizarry. Now, four years after the filing of the original complaint and two years after motions to dismiss the Second Amended Complaint were fully briefed, Plaintiffs seek to amend yet again.

¹ The "Moving Defendants" are HSBC Holdings plc, HSBC Bank plc, HSBC Bank Middle East Limited, HSBC Bank USA, N.A., Barclays Bank PLC, Standard Chartered Bank, the Royal Bank of Scotland N.V. (f/k/a ABN AMRO Bank N.V.), Commerzbank AG and Credit Suisse AG.

Plaintiffs' characterization of the "current draft" of the proposed Third Amended Complaint that they have provided to the Moving Defendants as "merely add[ing] plaintiffs in three categories" (Dkt. No. 199 Ex. A at 1) understates the significance of the proposed amendment. The proposed Third Amended Complaint certainly adds new plaintiffs—450, to be precise, more than doubling the existing number—but it also nearly doubles the number of attacks alleged, from 92 to 173. Beyond that, the proposed Third Amended Complaint itself remains in an unfinished state. Despite Your Honor's instruction that Plaintiffs "pick a date" and finalize a pleading for orderly review by the Court and Defendants, Plaintiffs' counsel instead apparently intend to continue to revise and expand the proposed Third Amended Complaint until the end of December. (*See id.* at 2.)

Plaintiffs have provided no satisfactory explanation for their lengthy delay in seeking to add new plaintiffs and attacks (the most recent of the newly-alleged attacks occurred in 2011, prior to the date the original complaint was filed). Where "a considerable period of time has passed between the filing of the complaint and the motion to amend, courts have placed the burden upon the movant to show some valid reason for his neglect and delay." *Sanders v. Thrall Car Mfg. Co.*, 582 F. Supp. 945, 952 (S.D.N.Y. 1983), *aff'd*, 730 F.2d 910 (2d Cir. 1984) (denying leave to file a third amended complaint). In addition, the attacks alleged in the current draft of the proposed Third Amended Complaint have pleading deficiencies as to which the Moving Defendants would move to dismiss were a motion to amend granted. Accordingly, we respectfully submit this letter to notify the Court that the Moving Defendants do not consent to the filing of the proposed Third Amended Complaint either in its current form or as Plaintiffs would propose further to modify it before the end of the year. A motion to amend is thus required to give the parties the opportunity fully to brief for the Court all relevant issues with the benefit of a proposed pleading that is not subject to ongoing revision.²

² To the extent Plaintiffs are concerned about the expiration of the statute of limitations (*see* Dkt. No. 199 Ex. A at 3), filing a motion to amend would be sufficient to preserve their new claims within the statute of limitations. *See, e.g., Rothman v. Gregor*, 220 F.3d 81, 96 (2d Cir. 2000); *Glatt v. Fox Searchlight Pictures Inc.*, 293 F.R.D. 516, 523–24 (S.D.N.Y. 2013), *vacated on other grounds*, 811 F.3d 528 (2d Cir. 2016).

We thank the Court for its consideration.

Respectfully,


John D. Buretta

Honorable Cheryl L. Pollak
United States Magistrate Judge
United States District Court
Eastern District of New York
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VIA ECF

Copies to:

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VIA ECF